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REGION III

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In the Matter of:

City of Richmond  
900 East Broad Street  
Richmond, Virginia

Respondent.

**ADMINISTRATIVE ORDER  
ON CONSENT**

Docket No. CWA-03-2014-0047 DN

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

The following findings are made and this Administrative Order on Consent (Consent Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

**II. FINDINGS of FACT, CONCLUSIONS OF LAW and FINDINGS OF VIOLATION**

1. Section 301(a) of the Act, 33 U.S.C. § 1311, prohibits the discharge of any pollutant by any person from a point source to navigable waters except in compliance with, among other things, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants or may authorize states to issue such permits.

3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), provides that discharges from a municipal separate storm sewer system (MS4) and storm water discharges associated with industrial activity may be subject to NPDES permitting requirements.

5. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

6. The City of Richmond, Virginia (Richmond or Respondent) is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

7. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” *Id.* § 122.26(b)(13).

8. The term “municipal separate storm sewer system” or “MS4” includes, *inter alia*, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

9. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16).

10. Pursuant to 40 C.F.R. § 122.32(a)(1), the Virginia Department of Conservation and Recreation (“VADCR” or “the Department”) has determined that Richmond is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit

11. Therefore, Richmond is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975. In 1991, EPA authorized Virginia to issue General NPDES Permits.

13. On July 9, 2008, VADCR issued a General NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems a/k/a Authorization to Discharge (MS4 Permit) to Richmond. The Permit is scheduled to expire on July 8, 2013,

14. The MS4 Permit authorizes discharges of storm water from Respondent's MS4 to waters of the Commonwealth of Virginia with exceptions that are not relevant here.

15. Section II B. 6. of the MS4 Permit requires the City to "Develop and implement and operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.... [T]he program shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance...

16. Section II.B. 6. of the MS4 Permit also provides that: "The operator shall identify and implement, evaluate and modify as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:...d. materials that are soluble or erodible shall be protected from exposure to precipitation....".

17. The City's MS4 Program Plan in Section 6.2 states "DPU will implement an employee training program for operations staff involved with vehicle maintenance and field activities that may impact the MS4."

18. Storm water discharges associated with industrial activity are required to be authorized by either the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Storm Water Discharges Associated with Industrial Activity (General VPDES Stormwater Industrial Permit), or by an individual VPDES permit for storm water discharge associated with industrial activity.

19. "Storm water discharges associated with industrial activity" is defined at 40 C.F. R. § 122.26(b)(14) and 9VAC25-151-10 and includes "Landfills, land application sites and open dumps that receive or have received any industrial wastes..." and "Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations or airport deicing operations..."



20. On January 23 and 24, 2012 representatives of EPA conducted an inspection of Richmond's MS4 program implementation. The inspection included, among other things, site visits to the Richmond Department of Public Works Hopkins Road Facility and East Richmond Landfill Facility.

21. At the time of the inspection, the Hopkins Road Facility was classified under Standard Industrial Classification Code 4173 and had a vehicle maintenance shop. At the time of inspection the Respondent did not have industrial stormwater permit coverage for its Hopkins Road facility.

22. The East Richmond Landfill Road Facility is an inactive landfill that has accepted industrial waste. At the time of inspection the Respondent did not have active industrial stormwater coverage for its East Richmond Landfill facility, although the facility had previously been covered by an industrial storm water permit.

23. At the time of the inspection, soluble and erodible materials were observed exposed to precipitation events, at the Hopkins Road facility. Diesel fuel containers were observed without secondary containment, visible sheens were seen adjacent to storm drain inlets, road sands were stored in a partially uncovered area and white goods were stored on the ground surface without containment.

24. At the time of the inspection, soluble and erodible materials were observed exposed to precipitation at the East Richmond Road Facility. Diesel fuel drums with evidence of leaking were observed without secondary containment and drums containing unknown substances were observed spilling substances onto the ground without secondary containment.

25. At the time of inspection, the Respondent had not developed a formal pollution prevention and good housekeeping training program for its employees that includes a curriculum and set frequencies or performance goals for training activities.

26. Respondent's failure to have industrial stormwater permit coverage for the Hopkins Road and East Richmond Landfill facilities is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

27. Respondent's failures: 1) to protect soluble and erodible materials and the Hopkins Road and East Richmond Road Landfill facilities from exposure to precipitation; and, 2) to provide training as required by the MS4 Permit and applicable regulations violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

### III. ORDER

AND NOW, this 30<sup>th</sup> day of April, 2014, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

1. Within six months of the effective date of this Order, Respondent shall take all actions necessary to comply with its MS4 Permit, including but not limited to:
  - a. Identify all Respondent's facilities which require NPDES General Industrial Stormwater Permits or individual industrial storm water permits;
  - b. Develop and submit to EPA a schedule for obtaining permit coverage for Respondent's facilities identified in Section III.1.a., and to insure that all Respondent's facilities covered by an NPDES General Industrial Stormwater Permit are in compliance with their SWPP;
  - c. Develop and implement a plan to assure that all soluble and erodible materials at Respondent's facilities are protected from exposure to precipitation;
  - d. Develop and implement a formal pollution prevention and good housekeeping training program for Respondent's employees that includes a curriculum and set frequencies or performance goals for training activities;
  - e. Develop and implement a plan to update the Respondent's MS4 System Map (storm sewer inventory map) to reflect, by June 30, 2018 (the end of the current permit cycle) inspection of all twenty-three (23) waterways in the City.
2. Within ninety (90) days of the effective date of this Order, Respondent shall submit a written report detailing the specific actions the Respondent will take to come into compliance with the MS4 Permit and permitting requirements for stormwater associated with industrial activities. The report shall be submitted to EPA, at the address provided in Paragraph IV.2, above.
3. All documents required by Paragraphs 1 and 2 of this Section shall be accompanied by a certification signed by a responsible corporate officer, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information*

*submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed \_\_\_\_\_  
Title \_\_\_\_\_

All documents required herein shall be submitted to:

Peter Gold  
Environmental Engineer  
NPDES Enforcement Branch  
Mail Code 3WP42  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **IV. GENERAL PROVISIONS**

1. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.
2. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
3. For purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Order.
4. By entering this Order, the Respondent does not admit any liability for the claims set forth herein.
5. Respondent waives any and all remedies, claims for relief and otherwise available claims for judicial or administrative review that Respondent may have with respect to any issue



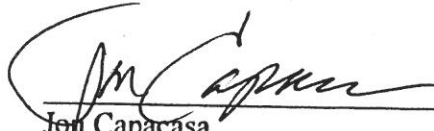
of law or fact set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

**V. EFFECTIVE DATE**

This ORDER is effective upon receipt by the Respondent.

SO ORDERED:

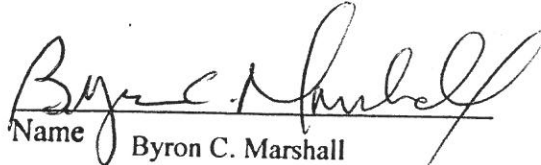
Date: 4/30/14

  
Jon Capacasa  
Director, Water Protection Division  
U.S. EPA Region III

AGREED TO:

For City of Richmond:

Date: 3/12/14

  
Name Byron C. Marshall

Chief Administrative Officer  
Title

